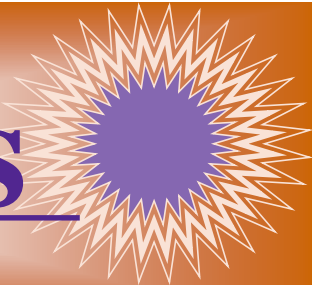


Ethics News

Newsletter of the Indiana State Ethics Commission

Issue No. 24

May 2002



Thinking of Moonlighting?

Are you thinking of looking for a second job and wondering if it's okay to do so? Are state employees allowed to moonlight under the ethics rules? Yes, as long as the second job is compatible with your agency rules and your state responsibilities. However, the second job must not impair your independence of judgment; create an incentive to reveal confidential information, or pose a likelihood of a conflict of interest. The same is true even for outside volunteer activity.



If you are considering outside employment, you may be required to get approval from your agency. Ask your supervisor or your agency's ethics officer.

If you question whether you are permitted to have the job according to the ethics rules, you should ask the State Ethics Commission for an advisory opinion. Moonlighting cases are frequently very fact-sensitive and the Commission decides each case individually.

Inside...

Front Page
•Moonlighting

Page Two
•Advisory
Opinions

Page Three
•Unofficial
Advisory Opinions

Page Five
•Enforcement
Proceedings

Page Ten
•Ethics Classes

Even if you are permitted to have a second job, you are not permitted to use state time, personnel, or other resources for that job.

If you do ask for an advisory opinion, what can you expect? Here are a few questions the Commission may ask:

1. What are your state duties?
2. What is the nature of your outside job and duties?
3. Is there anything about the outside job that is incompatible with your state duties?
4. Is there any action on your state job that you could take in regard to the potential employer, or parent company, subsidiary or competitors of the potential employer?
5. Does the potential employer have a business relationship with your agency?
6. Is there a potential conflict of interest through your spouse or minor child?
7. What confidential information would you know?
8. Could you steer business to the second job through your state position?
9. If a potential conflict of interest exists, could you be screened from involvement in actions regarding the employer?



**Going to the Track?
See p. 11 before you
go.**

Remember, the State Ethics Commission is not an adversarial body. Its members interpret the ethics rules for the good of the employee as well as the state.

The State Ethics Commission has issued several official advisory opinions on this subject. See Commission Advisory Opinions [97-I-5](#) and [91-I-13](#). These are available on the Commission's Web site, or by calling the office. Note that advisory opinions apply based only on the facts and circumstances presented to the Commission at the time.

Also, for more discussion of this subject, see the guide, "[Seeking Outside Employment](#)," another publication of the Indiana State Ethics Commission.

Advisory Opinions

Advisory opinions are rendered by the State Ethics Commission to determine whether a situation is permissible under the ethics code. Note that an opinion applies only to the individual to whom it is addressed (based on specific facts and laws that applied at the time of the opinion). Requests for opinions may be made by anyone under the jurisdiction of the State Ethics Commission or by Commission itself. We encourage people to ask before doing something that may raise a question. Ask your supervisor, your ethics officer, or the State Ethics Commission. For more information on requesting an opinion, contact the Ethics Commission or your agency's ethics officer.

No. 02-I-1 Conflict of Interest

Background

The State Ethics Commission received an advisory opinion request from a Transition Quality Coordinator (TQC) for the Division of Disabilities, Aging, and Rehabilitative Services (DDARS) of the Family and Social Services Administration. The Transition Quality Coordinator was considering offering property that she owned for rent to former residents of state hospitals that were being closed by the state. The ethics officer for the Division of Disabilities, Aging, and Rehabilitative Services of the Family and Social Services Administration urged her to bring the matter to the Commission to assure that she appropriately dealt with the ethics issues raised by this situation to rent property to former residents of Muscatatuck and Madison state hospitals.

Facts

A Transition Quality Coordinator performs quality assurance activities for approximately 70 residents of Muscatatuck State Developmental Center who are being transitioned into community-based homes that include rental properties. The TQC owns property that she would like to rent to individuals who are being discharged from Muscatatuck and Madison state hospitals.

Question

Does the state ethics code prohibit a Transition Quality Coordinator within DDARS from renting property to former residents of state hospitals who are not on her assigned caseload?

Conclusion

The Commission found that a Transition Quality Coordinator for the Division of Disabilities, Aging and Rehabilitative Services may rent a home to a former resident of a state hospital. The Commission, however, placed the following restrictions on a TQC who wishes to rent to a discharged individual. Those restrictions are as follows:

- The TQC may not serve as manager of the home in which the former resident resides.
- The TQC must advertise the availability of the home as any other potential landlord would.
- The TQC may not rent to any individual who is part of the TQC's regular caseload.
- The TQC may not use confidential information to facilitate the rental transaction.
- Immediately upon renting to a former state hospital patient, the TQC must file a disclosure statement with the State Ethics Commission. A disclosure statement is required for each person to which the TQC rents.

Relevant Law

IC 4-2-6-9

Conflicts of Financial Interest: "A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest."



IC 4-2-6-1(9)

Definitions: "'Financial Interest' means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services."

Related Opinions

Advisory Opinion [95-I-3](#) pertained to a similar situation but was not directly analogous.

Unofficial Advisory Opinions

This article briefly reviews questions recently addressed by the Ethics Commission staff. These opinions are not intended as a comprehensive analysis of the issue raised. For more information on whether and how this information may apply in another situation, contact your agency ethics officer or the State Ethics Commission.

#14 Compensation for Official Duties [IC 4-2-6-5](#)

A state employee is asked to speak to a professional association. Since the employee is speaking by reason of her state employment, she is not allowed to accept the honorarium offered by the organization. However, the professional organization tells the employee she may direct the payment to an agency program or to a charity of her choice.

The query raises the question of whether the offeree confers a financial benefit on the employee (compensation) when the offeree gives the employee the right to direct where the honorarium will go. The law prohibits state officers and employees from soliciting or accepting compensation, “other than that provided by law for such office or employment for the performance of his duties.” Staff concluded that the rule does not preclude the employee from participating in the decision of where the money is donated.

[#15 Moonlighting 40 IAC 2-1-8](#)

The director of a not-for-profit corporation that seeks grants and funding from state agencies asks if a state employee may sit on the company’s board of directors. Board members are volunteers and not paid for their services. The employee in question works for one of the state agencies that provides the grants.

As long as the state employee’s service on the board is not in any way incompatible with the employee’s official duties or would not impair his independence of judgment in discharging those duties, the employee may serve on the board.

[# 18 Conflict of Financial Interest IC 4-2-6-1\(9\) and IC 4-2-6-9](#)

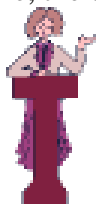
A state employee working on a contract with a state contractor hears of a job opening with the contractor’s company and wants to know at what point he can submit a resume for the position.

The basic law is: if a state employee is seeking private employment, the employee is prohibited from participating in a decision of any kind concerning a person (company) with whom he is negotiating (includes sending a resume).

Therefore, before negotiating for employment the employee must be screened from participating in any decisions regarding that company. If the employee can be screened, he may negotiate. If the employee cannot be screened, he may not negotiate.

[#40 Appearances, Activities, and Expenses IAC 2-1-7](#)

A state employee has been offered free lodging at a national conference by a private company. The conference is about designing off-road trails, which directly relates to the employee’s official duties. The employee would go on his own time but drive a state vehicle. The private company has no official business relationship with the state, but it does assist the employee’s agency with clearing trails and removing brush. Since the private company does not have a business relationship with the state agency, the question of whether the employee has discretion to act regarding the company is moot. Therefore, the employee may accept the offer.



To get advice, call (317) 232-3850
or e-mail
ethics@ethics.state.in.us

Enforcement Proceedings

On May 9, 2002, the State Ethics Commission adopted the following reports regarding six individual respondents, all of whom had waived their right to a public hearing, and entered into agreed settlements.

Case #02-C-3

Findings of Fact:

- 1) A supervisor with the Division of Family and Social Services Administration signed a computer access and use agreement in which she acknowledged that her state computer and computer access capabilities were to be used for official state business only and that the computer could not be used for personal or private purposes.
- 2) The supervisor then accessed and interacted with Web sites on state time for personal reasons. However, the employee did compensate the state for time spent on the Internet by working overtime.
- 3) The supervisor also used her state computer to access various Web sites after regular working hours.

Conclusions:

- The employee violated 40 IAC 2-1-9(f) by using her state computer in conjunction with her personal Internet research, which were not part of her official state duties.
- The employee violated 40 IAC 2-1-9(g) by using state time to conduct personal Internet research that was not part of her official state duties.

Agreed Sanctions:

- A fine of \$100.00 (to be paid within thirty (30) days after approval of Final Report).
- A written reprimand.
- The employee further agrees to refrain from accessing the Internet from her state computer for non-state purposes and to refrain from participating in non-state business during state working hours.

Case #02-C-2

Findings of Fact

- 1) A supervisor with Family and Social Services Administration is also a member and president of a professional association.
- 2) In 2001, the supervisor authored a letter on the association's stationery that addressed state employee salary and pension issues. The letter advised the

reader to contact legislators to support recommendations made in the letter.

- 3) On October 23, 2001, the supervisor held two meetings on state property for FSSA employees which he supervised. The purpose of each meeting was to provide the employees with additional information to write legislators or to share responses received from legislators.
- 4) The supervisor announced the meetings by posting a written notice at the state office allowing employees to attend either meeting during normal state business hours.
- 5) The topics and legislative positions discussed at the meetings did not reflect the official position of the Family and Social Services Administration and were more closely related to the position of the professional association.

Conclusions

- The supervisor violated 40 IAC 2-1-9(f) by holding two meetings of FSSA personnel to discuss association issues that were not necessarily the same as FSSA issues. In addition, the meetings were not part of his official state duties.
- The supervisor violated 40 IAC 2-1-9(g) by using state time to conduct the meetings that were not part of his or his employees' official state duties.

Agreed Sanctions

- A written reprimand.
- To attend ethics training.
- To refrain from conducting any activity related to his professional association and/or any other entity or organization during his regular state working hours or using state resources.

Case #02-C-1

Findings of Fact

- 1) A former employee with the Department of Commerce (IDOC) was responsible for assisting local governmental entities with grant applications for community development projects.
- 2) In early 1998, the former employee was assigned to a sewer project that sought a \$500,000 grant to partially fund its development project.
- 3) The former employee began corresponding with and assisting the County Commissioners and others involved in the sewer project on or about February 10, 1998.

- 4) The former employee continued his involvement with the sewer project and participated in the first “scoring” of the project to determine its qualifications to receive a grant on April 17, 1998.
- 5) The grant was denied and a second proposal was submitted and scored on October 5, 1998. The former employee participated in the scoring process.
- 6) On November 30, 1998, members of the sewer project were notified of its grant award.
- 7) The former employee left employment with the IDOC, and approximately one week later began employment with a contracting and engineering firm that was a consulting company hired to assist on the sewer project.
- 8) On behalf of the firm and the sewer project, the former employee provided advice and assistance with respect to a time extension that the sewer project sought and received in August 1999 (well within the 12-month time frame that the former employee was prohibited from participating in the project) via email from the firm to a member of the sewer project and the County Commissioners on August 26, 1999.
- 9) The sewer project was a “particular matter” per IC 4-2-6-11, with which the former employee was personally and substantially involved and one for which he had responsibility at IDOC until he left the agency’s employ.
- 10) Also per IC 4-2-6-11, the former employee was prohibited from representing or assisting a person with a “particular matter” for one (1) year from the time he had responsibility for that matter.

Conclusion

The former employee violated IC 4-2-6-11 by assisting the contracting and engineering firm and, in turn, the sewer project, with information gathering, a project time extension and bid process preparation pertinent to the sewer project within the proscribed one year period.

Agreed Sanctions

- A civil penalty of \$1,000.00 (to be paid within thirty (30) days after approval of final report).

Case #01-C-1

Findings of Fact

- 1) In the course of developing an outside business, an employee with Family and Social Services Administration distributed his business card containing his state fax number, state pager number and state e-mail address.

- 2) The outside business was a not-for-profit organization developed and incorporated by the employee.
- 3) Though not on state time, the employee conducted fund-raising for his business using state resources through the sale of donuts to be delivered to the FSSA office.
- 4) The employee conducted additional fund-raising with the use of state resources through t-shirt sales for an annual candlelight vigil.
- 5) During his regular state working hours, the employee used his state-issued computer to send e-mail messages concerning his company's business matters on three different occasions.

Conclusions

- A. The employee violated IAC 2-1-9(f) by using his state e-mail for personal purposes, and using a State of Indiana fax, and pager numbers and e-mail address on an outside business card.
- B. The employee violated IAC 2-1-9(g) by sending e-mail messages related to his company on state time.

Agreed Sanctions

- A civil penalty of \$250.00 (to be paid within thirty (30) days after approval of final report).
- A written reprimand.
- The employee further agreed to refrain from conducting any activity related to his company and/or any other entity or organization during his regular state working hours or using state resources.

Case # 01-C-4

Findings of Fact

- 1) An employee with Family and Social Services Administration (FSSA) operated an outside transportation service bound by an Indiana Medicaid Provider agreement. Under the agreement, the employee's service provided transportation for Medicaid clients.
- 2) Documentation provided by FSSA established that approximately fifty (50) vocational rehabilitation customers received transportation services from the employee's transportation service between July 1997 and June 2001.

- 3) FSSA records reflect that the employee was the counselor for five (5) of the 50 customers served by his transportation service.
- 4) FSSA records reflect that one of the employee's clients was at the same time a customer of the employee's transportation service. The other four transportation customers were former clients of the employee.
- 5) The employee attempted to ensure that his company would not transport VR customers, but acknowledged that his screening attempts failed in one particular case.

Conclusions

The employee violated 40 IAC 2-1-9 by providing transportation through his transportation service for a VR customer who was his VR client at the same time she received the transportation service.

Agreed Sanctions

- a written reprimand
- 1) The employee further agreed not to provide transportation or other services to any vocational rehabilitation client.
 - 2) The employee agreed not to directly or indirectly solicit or offer transportation services to any vocational rehabilitation client.
 - 3) The employee agreed to transfer those vocational rehabilitation clients now receiving services from his organization to an organization not associated with the employee.
 - 4) The employee agreed to comply with the DDARS rule(s) governing outside activities by vocational rehabilitation counselors.
 - 5) The employee agreed to also comply with his own screening procedures.

Case #00-C-6

Findings of Fact

- 1) In 1996, an employee with the Department of Education wrote and requested a contract between the Indiana Principal Leadership Academy (IPLA) and a state university.
- 2) On March 10, 1997, the employee executed a memorandum of understanding with a school corporation in which the corporation agreed to compensate the employee for the evaluation of the Integrated Studies Program at a local high school. The employee received a stipend of \$500.00 for his work for the school corporation.

3) On April 24, 1997, the employee participated in the “Academy of Leadership for Teachers” which was sponsored by an educational service center and held in Muncie. For his presentation on that date, the employee later signed a claim for \$300.00 plus \$27.50 for mileage. The employee later received a check in the amount of \$327.50 from a school corporation as compensation on the behalf of the education service center.

4) The employee was paid \$454.99, under the first IPLA contract, for consulting, travel and lodging at a regional meeting in Chicago on 5/12/97. This payment was made from IPLA contract funds through the state university under contract.

5) The employee reported March 10, 1997 (the day he performed work for the Penn-Harris Madison School Corporation) and April 24, 1997 (the day he performed work for the Academy of Leadership for Teachers), on his state employee attendance reports as days in which he worked his regular 7.5 hours.

Conclusions

- A. The employee violated 40 IAC 2-1-9(b) by accepting compensation for his work on March 10, 1997, for the school corporation and by participating in the “Academy of Leadership for Teachers,” sponsored by the educational service center April 24, 1997: both activities encompassed the performance of his IPLA official duties and, as reported by the employee, conducted on state time.
- B. The employee violated 40 IAC 2-1-9(a) by accepting payment for his May 12, 1997 attendance at the regional meeting in Chicago from the IPLA contract that he negotiated and administered as IPLA Director.
- C. The employee violated 40 IAC 2-1-7 by accepting reimbursement from the state university for attending the regional meeting.

Agreed Sanctions

- a civil penalty of \$3,747.47

Please send your questions or comments to:
<ethics@ethics.state.in.us> or call:
(317) 232-3850

or write:

Indiana State Ethics Commission
402 W. Washington St., Rm. W189
Indianapolis, Indiana 46204

2002 Ethics Classes Open

Ethics Orientation
(10:00 - 11:00 a.m.)
June 12, Aug. 21,
Sept. 24, Oct. 29

Ethics for Supervisors
(10:00 - 12:00 p.m.)
Sept. 11, Oct. 16

Ethics for Managers
(10:00 - 12:30 p.m.)
Sept. 12, Oct. 10

Classes are in the State Conference
Center or Training Center,
Indiana Government Center South,
402 W. Washington St., Indianapolis, IN

Please check directory for room location.

To register, call (317) 232-3850 or visit our
Web site at www.ethics.IN.gov

Going to the Track?

Check out the do's and don'ts of track activities.

As the Memorial Day Weekend approaches, state employees may be offered free tickets and passes to the "Indianapolis 500" and related events. May state employees accept these tickets or invitations? The question should be treated as any other gift issue. The answer depends on the relationship between the gift-giver and the state employee.



"500" tickets and passes offered at no charge are gifts and, therefore, should be examined under [40 IAC 2-1-6](#), Indiana's gift rule. Under this rule, an employee can determine the proper course of action by considering certain questions. [Click here](#) to review these questions, and to access the guide, "Indianapolis 500 Gift & Entertainment Guidelines for State Employees."

*U*ntil the world knows no aggressors, until the arms of tyranny have been laid down, until freedom has risen up in every land, we shall maintain our vigil to make sure our sons who died on foreign fields have not died in vain.



— Lyndon B. Johnson, Memorial Day, Gettysburg, Pennsylvania, May 30, 1963